SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 631

LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF RANDOLPH COUNTY

No. 671

LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY

BRIEF FOR PETITIONER

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ON WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY

BRIEF FOR PETITIONER

These cases are before the Court on writs of certiorari. In No. 631, the writ of certiorari was granted to review a decision of the Circuit Court of Randolph County denying the petition for writ of habeas corpus. In No. 671 the writ

of certiorari was granted to review a decision of the Criminal Court of Cook County dismissing the petition for the writ of habeas corpus. This brief is filed for both cases. The facts alleged in both petitions for writs of habeas corpus are identical.

Opinions Below

Neither court below rendered any opinion. The order of the Circuit Court of Randolph County reads, "Petition for Writ of habeas corpus denied for want of jurisdiction and failure to state a cause of action." (R.* 11) [1]

Jurisdiction

The judgment of the Circuit Court of Randolph County was entered on October 2, 1945. The petition for writ of certiorari was filed on November 30, 1945, and granted on February 25, 1946. The judgment of the Criminal Court of Cook County was entered on October 24, 1945. The petition for writ of certiorari was filed on December 15, 1945, and granted on February 25, 1946. The jurisdiction of this Court is invoked under Sec. 237(b) of the Judicial Code.[2]

Questions Presented

The questions presented are (1) whether the allegations of the petitions for writs of habeas corpus are sufficient to show that the petitioner has been deprived of his liberty without due process of law; (2) whether a non-Federal ground, namely, as the respondent contends, the availability of the motion in the nature of the writ of error *coram*

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[1] Citations to the record in No. 631 are marked with an asterisk.

[2] In Illinois, the denial of habeas corpus is not reviewable by the Illinois Supreme Court and accordingly certiorari lies to the Circuit Court of Randolph County and to the Criminal Court of Cook County. *People* v. *Siman*, 284 Ill. 28 (1918), *Hammond* v. *The People*, 32 Ill. 446 (1863). See *White* v. *Ragen*, 324 U. S. 760, 767 (1945).

nobis, adequately supports the denial of relief by the courts below in view of the fact that the statute of limitations on *coram nobis* has run; and (3) whether it was not the duty of the courts below to grant relief under the writ of habeas corpus because the allegations of the petitions for writs of habeas corpus are sufficient to show that the petitioner has been deprived of his liberty without due process of law, and the sentence was therefore void.

Constitutional Provision Involved

Section 1 of the Fourteenth Amendment to the Constitution provides, so far as is material here:

> "• • • nor shall any State deprive any person of life, liberty, or property, without due process of law • • •"

Statement

Petitioner Lee Van Woods filed two petitions for writs of habeas corpus in October, 1945. One of these petitions was filed in the Circuit Court of Randolph County on October 2, 1945.[3] (Appendix A.) Randolph County is the county in which te petitioner is imprisoned. The other petition was filed in the Criminal Court of Cook County on October 10, 1945 (R. 1). Cook County is the county from which the prisoner was sentenced.[4]

The petitions for the writ of habeas corpus alleged identical facts.

On or about March 8th or 9th, the Chicago police came to the petitioner's place of residence and put the petitioner under arrest. "The police took the petitioner into his bedroom and put revolver to the petitioner head, beating the

[3] Leave to sue as a poor person was filed on September 25th, 1945 (R•1).

[4] Thus the petitioner filed in the courts of the two countries permitted under the Illinois Habeas Corpus Act. See Ill. Stat. (1945) c. 65, § 2.

petitioner and telling the petitioner if he moved they the police would blow his brains out. In answer to the petitioner inquiries as to why he was being treated that way, they the police, then accused the petitioner of the crime of murder * * *" (R.* 4, R. 4).

The petitioner was then held and beaten by the police over a four day period (R.* 5, R. 5). "The petitioner was told that he would confess before they the police got through with him" (R.* 4, R. 4). He was taken to the "police station, while on the way there, the police put lighted cigarettes in petitioner face, demanding from him 'Are you going to talk nigger.'" "The petitioner arrived at the station, name and location unknown, about 12:00 noon, the petitioner was steadily questioned and beaten until 7:30 P. M. being told that he killed him and that the petitioner better confess, when it was learned that the petitioner would not confess, the petitioner was put into a cell and as often as he tried to recuperate from the beatings the petitioner was called for more questioning" (R.* 4, R. 4).

The following morning "the petitioner was beaten some more at this station and then taken to the 48 Street Station, where he was again beaten and questioned until about 2:00 P. M. At all times the petitioner protested his innocence of the charges which the police were trying to make him confess too" (R.* 4, R. 4).

"Sometime that afternoon the petitioner was taken to the Stanton Avenue Station where the police took him in the basement and handcuffed the petitioner to a pipe on the ceiling, beated the petitioner with blackjacks, clubs and hands. The officer in charge of the police at the time of the arrest, was Sergeant Bob Hornett, also this Sergeant Hornett was there most of the time supervising the treatment. The questioning and beatings was continued for two days then the petitioner was taken and put in a line up for

identification. Witnesses were brought and upon the insistence of the police that the petitioner was the man and upon the petitioner's pleas to one witness that this witness be fair this witness said he did not know for sure but that the petitioner might be the man.

Then the petitioner was taken to the office of the station where a person in civilian clothes questioned him, the petitioner at all times protested his innocence. The petitioner was taken out of this office and while the petitioner was leaving he heard this person tell the police to get a confession.

"About the fourth day after petitioner arrest he was taken to the *the* States Attorneys office at 26th Street and California when the petitioner was told to sign some papers. The petitioner was attempting to read these papers, when Sergeant Hornett began beatings again telling the petitioner to sign them or he would finish the job of killing the petitioner. The petitioner could not stand any more beatings so the petitioner signed the papers which later learned was a confession." (R.* 4-5, R. 5).

It was only after this confession and four days of beating that the petitioner was taken before a judge and bound over to the grand jury. (R.* 5, R. 5).

An indictment for murder was returned on March 14, 1940. (R.* 5, R. 5). On March 15, 1940, the Public Defender was appointed as counsel for the petitioner. (R.* 5, R. 5). But the Public Defender did not consult with the petitioner with regard to the facts of the crime charged against the petitioner, until May 20th, 1940 when "the petitioner was taken to the Court room bullpen to await his trial". (R.* 5, R. 6). "While there a colored man came to see the petitioner telling him that he was the petitioner lawyer and had been appointed to defend the petitioner. The petitioner was told by this lawyer that everything was

fixed. The counsel would not listen to the facts and matters concerning the treatment the petitioner received by the police, the counsel kept saying that the petitioner should let him handle it as he was a lawyer and knew what he was doing and that he the lawyer would handle everything.

"From the evidence given at the trial the petitioner first learned that he was supposed to have shot Stephen Broscoe (fol. 10) about 6:35 P. M. the night of March 6, 1940. The petitioner tried to tell the judge that the petitioner did not know anything of the crime, but the petitioner counsel pulled him back into his seat and told the petitioner that he had pleaded guilty, that if the petitioner did not keep his mouth shut he would go to the electric chair, the States attorney also saying if the petitioner don't keep his mouth shut he will burn. At no time did the petitioner counsel object to the proceedings in the Court, examine the witnesses, nor put forth any evidence for the petitioner defense, at the close of the States evidence, the Petitioner counsel told the Court, that the petitioner was guilty and should receive a prison sentence which should keep the petitioner in prison for the rest of petitioner life, a sentence of ninety-nine (99) years being imposed on May 21, 1940.

"At the time of the crime which the petitioner was charged with the petitioner could have proven that he was at a friend house from where he went to his own place of residence at 4733 Michigan Ave., Chicago, Illinois, here the petitioner played cards with others and from there the petitioner called up other friends. This was told to the counsel on the day of the petitioner trial, but petitioner lawyer said due to the confession which was signed in the States Attorneys office, he the counsel could not get the witnesses and that only a plea of guilty could be had under the circumstances. At no time did the petitioner authorize

the Public Defender to enter a plea of guilty or enter such a plea himself, at all times the petitioner pleaded not guilty and protested his innocence of the crime charged." (R.* 6, R. 6).

On May 21st, 1940, the Criminal Court of Cook County, without a jury trial and as though on a plea of guilty, adjudged the petitioner guilty of murder and sentenced him to 99 years imprisonment. (R.* 9-10, R. 10). The petitioner was twenty-two years old at the time. (R.* 6, R. 7).

The petition in the Circuit Court of Randolph County was denied without opinion on October 2, 1945 "for want of jurisdiction and failure to state a cause of action." (R.* 11). Petitioner filed his petition for a writ of certiorari in this Court on November 30th, 1945, accompanying this petition with a motion for leave to proceed in forma pauperis. On February 25, 1946, this Court granted the motion for leave to proceed in forma pauperis and also granted the certiorari petition. (R.* 11).

The petition in the Criminal Court of Cook County was dismissed on October 24, 1945. (R. 12) A motion to dismiss had been filed by the respondent on that day. (R. 11). Petitioner filed his petition for a writ of certiorari in this Court on December 15, 1945, accompanying this petition with a motion for leave to proceed in forma pauperis. On February 25, 1946, this Court granted the motion for leave to proceed in forma pauperis and also granted the certiorari petition. (R.*12-13).

On March 8, 1946, this Court appointed the undersigned as counsel for petitioner in these cases.

Specification of Errors to Be Urged

1. The Circuit Court of Randolph County erred in denying the petition for the writ of habeas corpus without requiring respondent to answer and without giving to petitioner an opportunity to prove his allegations.

2. The Criminal Court of Cook County erred in dismissing the petition for the writ of habeas corpus upon respondent's motion to dismiss and without requiring respondent to answer and without giving petitioner an opportunity to prove his allegations.

3. The Criminal Court of Cook County erred in not holding that since the motion to dismiss admits the well pleaded allegations of the petition, the petitioner was deprived of his liberty without due process of law in violation of the Fourteenth Amendment.

4. The Courts below erred in not holding that the petitions for writs of habeas corpus adequately stated a cause of action that the petitioner was deprived of his liberty without due process of law in violation of the Fourteenth Amendment by reason of a void conviction on a capital charge without the effective assistance of counsel and by reason of duress and coercion resulting in a forced and untrue confession and in a plea of guilty not authorized or made by the petitioner.

Argument

1. *The petitions for the writ of habeas corpus sufficiently allege facts showing that petitioner has been denied due process within the meaning of the Fourteenth Amendment.*

The petition for the writ of habeas corpus filed in the Circuit Court of Randolph County and the petition filed in the Criminal Court of Cook County allege identical facts. The petitioner was beaten by the police over a four day period in an effort to make him confess a murder he did not commit. During the first day "as often as he tried to recuperate from the beatings the petitioner was called for more questioning." (R. 4, R. 4). On the fourth day he was told that if he did not sign the papers which had

been prepared for him, he would be killed. (R.* 5, R. 5). Petitioner later discovered these papers constituted a confession.

Counsel appointed to represent the petitioner did not consult with him until the petitioner was taken to the courtroom bull pen awaiting trial and then, telling him that everything was fixed, refused to listen to the facts concerning the extorted confession and petitioner's innocence. (R.* 5, R. 6). In connection with petitioner's statement to his counsel that he was at a friend's house and then at his own residence during the time when the crime was committed, petitioner's counsel told him that "due to the confession which was signed in the State's Attorney's office, he the counsel could not get witnesses and that only a plea of guilty could be had under the circumstances." (R.* 6, R. 6). When the petitioner tried to tell the trial judge that the petitioner knew nothing about the crime, petitioner's counsel pulled him back into his seat, told him he had pleaded guilty, and that if he did not keep his mouth shut, he would go to the electric chair. The State's Attorney likewise threatened the petitioner with the electric chair if he did not maintain his silence. (R.* 6, R. 6). The petitioner had never authorized a withdrawal of his plea of not guilty. He did not plead guilty himself, nor did he authorize any such plea to be entered for him. (R.* 6, 7, R. 6, 7).

The adjudication that the petitioner was guilty of the crime of murder after a trial conducted in this manner is shocking to the universal sense of justice and offensive to the common and fundamental ideas of fairness and right. The defendant did not have the effective assistance of counsel. He was not permitted to call witnesses he maintains could have proven his innocence. The coercion of the beatings and the repeated and protracted questioning

which forced the confession permeated the trial. The Attorney General of Illinois agrees, in his brief in opposition to the petitions for certiorari, that the charges of the petitions for writs of habeas corpus are "Sufficient in substance to charge want of due process under this court's holdings." Brief for Respondent in Opposition to Certiorari, 1-2; *Hawk* v. *Olson*, 66 Sup. Ct. 116 (1945), *White* v. *Ragen*, 324 U. S. 760 (1945); *House* v. *Mayo*, 324 U. S. 42 (1945).

The substance of petitioner's claim is clear. *Tomkins* v. *Missouri*, 323 U. S. 485 (1945). The motion to dismiss the petition for the writ of habeas corpus filed in the Criminal Court of Cook County admits the substance of petitioner's claim. *Toledo, Peoria & Western Railroad* v. *Brown*, 375 Ill. 438, 31 N. E. 2d 767 (1941). The Circuit Court of Randolph County declined to issue the writ holding that there was a "Want of jurisdiction and failure to state a cause of action." (R. 11). It denied the petition the same day it was filed. (Appendix A.) In neither case was the respondent required to answer, in neither case was the petitioner given an opportunity to prove his allegations.

The position taken by respondent in the brief in opposition to certiorari is not that the petitions do not sufficiently allege a denial of due process. He admits that the allegations are sufficient in substance to charge a want of due process, but argues that Illinois affords a plain, speedy and adequate remedy by a statutory motion in the nature of a writ of error coram nobis. Brief for respondent in opposition to Certiorari, 2.

2. *The motion in the nature of the writ of error coram nobis does not lie because the statute of limitations has run.*

The statutory motion in the nature of the writ of error coram nobis is not available to the petitioner. The statute of limitations on that motion has run. The statutory limitations on that motion is that the motion must be made within five years from the date of the rendition of final judgment. Ill. Rev. Stat. (1945) c. 110, § 196 (Statute set forth as Appendix B to this brief). The statutory period in this case expired in June, 1945. Petitioner was adjudged guilty and sentenced in the Criminal Court of Cook County on May 21, 1940 (R. 9-10, R. 9-10). He filed his petitions for habeas corpus on October 2, 1945 in the Circuit Court of Randolph County (R. 1-2 Appendix A) and on October 10, 1945, in the Criminal Court of Cook County (R. 1). At that time the time for the statutory motion of *coram nobis* had expired.

Coram nobis in Illinois is an unsure and uncertain remedy at best.[5] But the statutory limitation to a five year period "after the rendition of final judgment in the case" is clear. Ill. Rev. Stat. (1945) c. 110, § 196. The Illinois Supreme Court has stated: "Except for the correction of errors of fact, as provided by statute, within five years after final judgment, the court has no power to vacate a judgment of conviction after a defendant has commenced his sentence and after the end of the term of court at which he was convicted * * * A motion for the correction of errors of fact must be presented within five years of the rendition of the judgment. (Ill. Rev. Stat. 1937, chap. 110, par. 196,

[5] It is said not to apply, for example, where the error alleged is the error of the judge or an error of law. See *People* v. *Thon*, 374 Ill. 624, 30 N. E. 2d 54 (1940); *People* v. *Williams*, 293 Ill. App. 92 (1937); *People* v. *Parcora*, 358 Ill. 448, 193 N. E. 477 (1934).

p. 2406.)" *People* v. *Sprague*, 371 Ill. 627, 629, 21 N. E. 2d 763, 764 (1939); see also *People* v. *Dabbs*, 372 Ill. 166, 166, 23 N. E. 2d 343, 346 (1939).

The statutory period for *coram nobis* can be extended only "when the person entitled to make such motion shall be an infant, *non compos mentis*, or under duress, at the time of passing judgment." In that event "the time of such disability shall be excluded from the computation of said five years." Ill. Rev. Stat. (1945) c. 110, § 196. Petitioner is afforded no relief from the statutory limitation by this provision. The Illinois Supreme Court has recently held that confinement to the penitentiary under a sentence of life imprisonment would not stop the running of the statute. "It is a matter of common knowledge that writs of error and writs of habeas corpus are filed on behalf of persons who are serving life sentences in the penitentiary, and in *People* v. *Crooks*, 326 Ill. 266, we said 'A motion for writ of error *coram nobis* may be heard after the defendant has been imprisoned and is serving his sentence, and the court may, upon a proper writ, have the defendant brought into court for such hearing, if necessary.' We do not believe that this constitutes duress within the meaning of said exception in the provision fixing the period of limitation at five years." *People* v. *Ravo*, 392 Ill. 435, 444, 65 N. E. 2d 23, 27-28 (1946).

The limitation period begins to run at the "rendition of final judgment." Ill. Rev. Stat. (1945) c. 110, § 196. Prior to July 1st, 1872, the effective date of this statute abolishing the common law writ of error *coram nobis* and substituting the motion, the Illinois Supreme Court had "strongly intimated that a motion made at a term subsequent to that at which judgment was rendered, could not be sustained, though made to correct errors in fact as upon writ of error *coram nobis*." *Mains* v. *Cosner*, 67 Ill. 536, 537

(1873). This strong intimation was given in *McKindley v. Buck*, 43 Ill. 488 (1867), which held that a writ of error *coram nobis* could not be brought to set aside a judgment after the term had expired at which the judgment was rendered. See *Cook v. Wood*, 24 Ill. 295 (1860). It was against this background that the common law writ was abolished and the statutory motion created. The limitation of five years after the rendition of final judgment was a limitation made in a grant of jurisdiction to the courts of jurisdiction previously denied under the common law writ. The judgment becomes final either at the end of the term of court or before that time when sentence has been entered upon. See *People ex rel. Swanson v. Williams*, 372 Ill. 227, 230, 185 N. E. 598, 599 (1933); *People ex rel. Armitage v. LaBuy*, 285 Ill. 141, 120 N. E. 537 (1918); *People ex rel. Lucey v. Turney*, 273 Ill. 546, 553, 113 N. E. 105, 108 (1916); cf. *United States v. Howe*, 280 Fed. 815, 820 (C. C. A. 2d, 1922).

In Illinois, by statute in effect when petitioner was convicted, the term of the Criminal Court of Cook County commences on the first Monday of every month, and the term continues until the first day of the succeeding term. Ill. Rev. Stat. (1945) c. 37, § 165 a. The limitation period for *coram nobis* begins at the rendition of final judgment, a time certainly not later than the end of the term. The petitioner was sentenced on May 21st, 1940 (R. 9-10, R. 9-10). The term ended in June 1940. Thus the five year period permitted by the *coram nobis* statute expired in June, 1945. Petitioner cannot claim that the period was tolled by reason of the duress of imprisonment. He was not an infant nor was he *non compos mentis* during his period of confinement. *Coram nobis* is closed to him.

3. *It was the duty of the courts below to grant relief under the writs of habeas corpus.*

The writ of habeas corpus lies in Illinois when the petitioner is confined by virtue of a judgment which is void and not merely erroneous.[6] A judgment is not merely erroneous but it is void when procedural due process has been denied or a basic constitutional right denied. *People ex rel. Joyce* v. *Strassheim*, 242 Ill. 359, 90 N. E. 118 (1909); *People ex rel. Maglori* v. *Siman*, 284 Ill. 28, 119 N. E. 940 (1918); cf. *Ex parte Lange*, 85 U. S. 163 (1873); *Johnson* v. *Zerbst*, 304 U. S. 458, 465 (1938). When, as is true in this case if the allegations in the petitions for habeas corpus are accepted, a trial violates the fundamental principles of fairness and right, the court loses its jurisdiction to render the judgment; its judgment is void. It is no less void than a judgment of conviction in violation of the constitutional right to jury trial. *Harris* v. *People*, 128 Ill. 585, 21 N. E. 563 (1869). "The substitution of the finding of the court," where the basic constitutional right to jury trial has been violated, "leaves the court as destitute of the power to sentence as if no step whatever had taken place, intervening the plea of not guilty and the sentence." *People ex rel. Lyons* v. *Hanchett*, 16 Chicago Legal News 320 (1884). See *People ex rel. Swanson* v. *Fisher*, 340 Ill. 250, 257 (1930) which now permits waiver of jury trial in Illinois, and *People* v. *Hofman*, 379 Ill. 318 (1942).

Denial of the relief below is only explainable upon the assumption that no basic constitutional right is involved because the allegations of the petitions for habeas corpus need not be believed, and petitioner need not be given an opportunity to prove them, nor even to compel an answer

[6] This is the problem in the indeterminate sentence cases. The *People ex rel. Wakefield* v. *Montgomery*, 365 Ill. 478, 6 N. E. 2d 868 (1937); *U. S. ex rel. Freislinger on behalf of Kapper* v. *Smith*, 41 F. 2d 707 (1930).

from respondent which puts the facts at issue. This is a denial of Federal due process.

Even if *coram nobis* were available but not the exclusive remedy, the petitions for writs of habeas corpus would be appropriate, and their denial without opinion would raise a Federal question unless some adequate non-Federal ground should appear. *New York ex rel. Whitman* v. *Wilson*, 318 U. S. 688 (1943). The State of Illinois has always recognized the remedy of habeas corpus. See *Doss* v. *Lindsley*, 53 F. Supp. 427, 431 (D. C. Ill., 1944). It did so at a time when the Illinois Supreme Court referred to the common law writ of error *coram nobis* as "an "old writ (which) has never been in use in this State, and it has fallen into desuetude even in England." *McKinley* v. *Buck*, 43 Ill. 488, 490 (1867). In Illinois the writ of habeas corpus is "a prerogative writ, great and efficacious in the protection of the citizen in one of the most essential of all his personal rights—his right to liberty." *People* v. *Bradley*, 60 Ill. 390, 391 (1871). Both the Illinois Constitution of 1870 and the first Constitution of Illinois provide for the writ. Ill. Const. (1870) art. 2, § 7; Ill. Const. (1818) art. 8, § 13. Habeas corpus reaches not only the court's jurisdiction to hear and determine but its final jurisdiction to render the particular judgment. *People ex rel. Maglori* v. *Siman*, 284 Ill. 28, 32, 119 N. E. 940, 942 (1918). The writ is available to raise questions which go to the very heart of petitioner's conviction. See *People ex rel. Barrett* v. *Bradley*, 391 Ill. 169, 62 N. E. 2d 788 (1945).

But in this case if habeas corpus does not lie, petitioner has no remedy whatsoever in the State courts.[7] *Coram nobis* is unavailable because the statute of limitations has run. There is no remedy in the writ of error. *People* v. *Bertrand*,

[7] He has no remedy by habeas corpus in the Illinois Supreme Court which "does not try questions of fact." *People ex rel. Swolley* v. *Ragen*, 390 Ill. 106, 107, 61 N. E. 2d 248 (1945).

385 Ill. 289, 290, 291, 52 N. E. 2d 706, 707 (1944); see *United States ex rel. Hall* v. *Ragen*, 60 F. Supp. 820, 824 (1945) Ill. Rev. Stat. (1945) c. 110, § 259.70a. There is no other remedy. To deny habeas corpus in this case is to assume that Illinois affords no corrective process for the violation of a basic constitutional right.

It cannot be assumed that Illinois affords no corrective process for one who is imprisoned under a judgment rendered in violation of rights protected by the Federal constitution. *Smith* v. *O'Grady*, 312 U. S. 329 (1941). "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution." *Mooney* v. *Holohan*, 294 U. S. 103, 113 (1935). See *Morhous* v. *Supreme Court of New York*, 293 N. Y. 131, 135, 139, 140, 56 N. E. 2d 79, 82, 84 (1944). The assumption that Illinois provides no remedy is particularly untenable in view of its Constitution which provides in section 19 of the Bill of Rights: "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation: he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay." Ill. Const. Art. 2, § 19.

Beyond this, the Illinois Constitution provides that "no person shall be deprived of life, liberty or property without due process of law." Ill. Const. art. 2, § 2; that the "right of trial by jury as heretofore enjoyed, shall remain inviolate." Ill. Const. art. 2, § 5, and that "in all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel • • • and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury." Ill. Const. art. 2, § 9 • • •" The Criminal Code provides that "every person charged with crime shall be allowed counsel

and when he shall state upon oath that he is unable to procure counsel, the court shall assign him competent counsel, who shall conduct his defense." Ill. Rev. Stat. (1945) c. 38, §730. See also *People ex rel. Ross* v. *Ragen*, 391 Ill. 419, 420-422, 63 N. E. 2d 874-75 (1945). Petitioner's allegations, which he has been given no opportunity to prove, assert that these rights have been denied him. It is unthinkable that the State has provided no remedy and no process through which petitioner may be heard. The Constitution of Illinois has provided that this must not be the case. It is the duty of the State to provide a remedy. The remedy provided by the State is the "great and efficacious" remedy of habeas corpus. It is available here and can only be denied by denying to petitioner the basic constitutional right to a fair trial.

Conclusion

The petitions for writs of habeas corpus admittedly are sufficient in substance to charge a want of Federal due process. The petitions were denied in the one case and dismissed in the other without any requirement that respondent answer and petitioner was not given an opportunity to prove his allegations. No indication of any non-Federal ground adequate to support the judgments of the courts below has been given. The courts below did not state any such ground. *Coram nobis* is not available since the statutory period within which that motion may be brought has expired. No other State remedy, other than habeas corpus, is available. The appropriate and only State remedy is habeas corpus.

It is submitted that the judgments below should be reversed and remanded.

Respectfully submitted,

EDWARD H. LEVI,
Counsel for Petitioner.

APPENDIX A

HAROLD HAHN
Circuit Clerk, Randolph County
Chester, Illinois

March 23, 1946.

Mr. Edward H. Levi,
The Law School,
The University of Chicago,
Chicago 37, Illinois.

Dear Sir:

In answer to your letter of March 20, concerning the case of Lee Van Woods, Writ of certiorari; this is to inform you that his case was filed in this office as of October 2, 1945, and also denied on that same date.

Hoping this is the information you desire, I am

Very truly yours,

Sd. HAROLD HAHN,
Circuit Clerk, Randolph County, Illinois.

APPENDIX B

Illinois Coram Nobis Statute

"The writ of error coram nobis is hereby abolished, and all errors in fact, committed in the proceedings of any court of record, and which, by the common law, could have been corrected by said writ, may be corrected by the court in which the error was committed, upon motion in writing, made at any time within five years after the rendition of final judgment in the case, upon reasonable notice. When the person entitled to make such motion shall be an infant, non compos mentis or under duress, at the time of passing judgment, the time of such disability shall be excluded from the computation of said five years." (Ch. 110, Par. 196, Ill. Rev. Stats., 1945.)

APPENDIX C

Illinois Habeas Corpus, Ill. Stat. 1945, c. 65

Para. 1. (Who may have writ, Section 1. Be it enacted by the People of the State of Illinois, represented in the General Asembly: That every person imprisoned or otherwise restrained of his liberty, except as herein otherwise provided, may prosecute a writ of habeas corpus in the manner provided in this Act, to obtain relief from such imprisonment or restraint, if it prove to be unlawful.

Para. 21. (No discharge, when.) Section 21. No person shall be discharged under the provisions of this Act, if he is in custody either——

1. By virtue of process by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or

2. By virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree, unless the time during which such party may be legally detained has expired; or

3. For any treason, felony or other crime committed in any other State or Territory of the United States, for which such person ought, by the Constitution and laws of the United States, to be delivered up to the executive power of such State or Territory.

Para. 22. (Prisoner under process of court—Grounds for discharge.) Section 22. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

1. Where the court has exceeded the limit of the jurisdiction, either as to the matter, place, sum or person.

2. Where, though the original imprisonment was lawful, yet, by some act, omission or event which has subsequently taken place, the party has become entitled to his discharge.

3. Where the process is defective in some substantial form required by law.

4. Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest to issue.

5. Where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him.

6. Where the process appears to have been obtained by false pretense or bribery.

7. Where there is no general law, nor any judgment order or decree of a court to authorize the process if in a civil suit, nor any conviction, if in a criminal proceeding. No court or judge, on the return of a habeas corpus, shall, in any other matter, inquire into the legality or justice of a judgment or decree of a court legally constituted.

FILE COPY

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 631

LEE VAN WOODS,

Petitioner

vs.

WALTER NIERSTHEIMER, Warden Illinois State Penitentiary, Menard, Illinois

Respondent

Writ of Certiorari to the Circuit Court of Randolph County

No. 671

LEE VAN WOODS,

Petitioner

vs.

WALTER NIERSTHEIMER, Warden Illinois State Penitentiary, Menard, Illinois

Respondent

Writ of Certiorari to the Circuit Court of Randolph County

SUPPLEMENTARY APPENDIX TO BRIEF FOR PETITIONER.

At the time of the filing of petitioner's brief, counsel for petitioner did not know that the record before this court in No. 63 Misc. Woods v. Nierstheimer, a motion for leave to file a petition for habeas corpus, contained references and correspondence attached by petitioner relating to a motion in the nature of an application for a writ of error coram nobis filed

The correspondence attached by petitioner to his motion in Woods v. Nierstheimer No. 63 Misc. purports to show that this petition for a writ of error coram nobis was denied on July 5, 1945. This denial of a coram nobis proceeding is not a part of the record in either No. 631 or No. 671.

In view of the fact, however, that references to this denial are contained in this Court's record of No. 63 Misc., counsel for petitioner wishes to inform the Court that he has examined the record in the coram nobis proceeding referred to and according to the record of the Criminal Court of Cook County, petitioner's petition for coram nobis was permitted to be filed on July 5, 1945 and was denied on July 5, 1945. No written motion or pleading was filed by the state and petitioner received no hearing as to the truth of his allegations.

The denial of the petition for coram nobis referred to does not change the position taken in petitioner's brief, nor is it asserted that this denial is a part of the record in No. 631 or No. 671.

Respectfully submitted,

Edward H. Levi
Counsel for Petitioner

Corrections in Petitioner's Brief

Page 3, footnote 4: "countries" should be "counties".

Page 14: citation for Harris v. People, 15th line of first paragraph should be 128 Ill. 585, 21 N.E. 563 (1889); similar change should be made in list of citations under index.